

1 UNITED STATES DISTRICT COURT
2 DISTRICT OF NEVADA

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4 PROTEINHOUSE FRANCHISING, LLC,
5 et al.,

6 Plaintiffs,

7 v.

8 KEN B. GUTMAN, et al.,

9 Defendants.

Case No. 2:17-cv-02816-APG-PAL

**ORDER DENYING MOTION TO
DISMISS AND GRANTING MOTION
TO SUPPLEMENT RESPONSE**

(ECF Nos. 25, 38)

10 The plaintiffs are the owners and franchisors of Proteinhouse restaurants. They allege
11 their former business associates stole their webpage and business secrets and defamed them to
12 franchisees. Defendant Ken Gutman moves to dismiss the plaintiffs' amended complaint, arguing
13 that this court cannot exercise personal jurisdiction over him. ECF No. 25. The plaintiffs filed an
14 opposition, and later moved for permission to supplement their opposition with newly discovered
15 evidence. ECF No. 38. Because the motion to supplement is unopposed, I grant it under Local
16 Rule 7-2(d). I deny Gutman's motion to dismiss because the plaintiffs adequately allege that
17 Gutman has conducted activities within Nevada, and has directed actions at Nevada such that he
18 should reasonably expect to be sued here.

19 When a defendant moves to dismiss for lack of personal jurisdiction, the plaintiff bears the
20 burden of demonstrating that jurisdiction is appropriate. The plaintiff "need only make a prima
21 facie showing of jurisdictional facts." *Schwarzenegger v. Fred Martin Motor Co.*, 374 F.3d 797,
22 800 (9th Cir. 2004) (citing *Sher v. Johnson*, 911 F.2d 1357, 1361 (9th Cir. 1990)). "Although the
23 plaintiff cannot simply rest on the bare allegations of its complaint, . . . uncontroverted allegations
24 in the complaint must be taken as true." *Id.* (citation omitted); *see also Bancroft & Masters, Inc.*
25 *v. Augusta Nat'l, Inc.*, 223 F.3d 1082, 1087 (9th Cir. 2000) ("Because the prima facie
26 jurisdictional analysis requires us to accept the plaintiff's allegations as true, we must adopt [the
27 plaintiff's] version of events for purposes of this appeal.").

1 The court cannot exercise general personal jurisdiction over Gutman because he lacks
2 “continuous and systematic” affiliations with Nevada. *Daimler AG v. Bauman*, 134 S.Ct. 746, 754
3 (2014).

4 The court may exercise specific personal jurisdiction over Gutman if: (1) he purposefully
5 directed activities at or consummated some transaction with Nevada or a Nevada resident; or
6 performed some act by which he purposefully availed himself of the privilege of conducting
7 activities in Nevada, thereby invoking the benefits and protections of its laws; (2) the plaintiffs’
8 claims arise out of or relate to his forum-related activities; and (3) the exercise of jurisdiction
9 comports with fair play and substantial justice, i.e. it is reasonable. *Schwarzenegger*, 374 F.3d at
10 802. The plaintiffs have the burden of proving the first two parts of this test. If they do, the
11 burden shifts to Gutman to “present a compelling case” that the exercise of jurisdiction would not
12 be reasonable. *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 477 (1985).

13 The plaintiffs adequately allege that Gutman purposefully availed himself of the privilege
14 of conducting activities in Nevada. Gutman traveled to Nevada to negotiate an agreement with
15 the plaintiffs, who are Nevada residents and a Nevada entity. Gutman knew he would be working
16 for the Nevada entity and (after entering into the agreement) he continued to travel to Nevada to
17 perform parts of his contractual duties. *See* ECF Nos. 20 at ¶ 3; 27-1 at ¶¶ 6-10. He performed
18 numerous duties for the plaintiffs and was paid for doing so.

19 The plaintiffs also adequately allege that Gutman purposefully directed tortious conduct at
20 Nevada and a Nevada entity. Gutman allegedly sent disparaging emails about the plaintiffs to
21 their franchisees and seized the plaintiffs’ domain name and website. *See* ECF No. 20 at ¶¶ 29-30.
22 Gutman knew the individual plaintiffs live in Nevada and that Proteinhouse is a Nevada entity.
23 His actions therefore were directed at a known Nevada entity and Nevada citizens with the clear
24 intent that the impacts would be felt in Nevada.

25 The plaintiffs’ claims are based on Gutman’s contract with the plaintiffs and his alleged
26 tortious actions against the plaintiffs. Thus, the plaintiffs’ claims arise from Gutman’s forum-
27 related activities.
28

Given Gutman's activities, it is reasonable that he come to court in Nevada to answer the plaintiffs' claims. Gutman does not argue to the contrary. Because this court can exercise specific personal jurisdiction over Gutman, his motion to dismiss will be denied.

IT IS THEREFORE ORDERED that defendant Gutman's motion to dismiss (**ECF No. 25**) is **DENIED**.

IT IS FURTHER ORDERED that the plaintiffs' motion to supplement the record (**ECF No. 38**) is **GRANTED**.

DATED this 5th day of April, 2018.


ANDREW P. GORDON
UNITED STATES DISTRICT JUDGE